

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JESUS MIGUEL VILLARREAL,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

CASE NO. C14-5358 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING
PETITION FOR HABEAS CORPUS
AND DENYING CERTIFICATE OF
APPEALABILITY

This matter comes before the Court on the Report and Recommendation of Magistrate Judge Karen L. Strombom. Dkt. 19. The Magistrate Judge recommends that Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied and that a certificate of appealability be denied. *Id.* Pursuant to 28 U.S.C §636(b)(1), the Report and Recommendation was noted for consideration on August 22, 2014. Dkt. 19. On August 26, 2014, the Court granted Petitioner's motion for an extension of time to file objections and renoted the Report and Recommendation for consideration on September 19, 2014. Dkt. 21. As of this date, September

29, 2014, Petitioner has not filed objections to the Report and Recommendation. The Court has considered the relevant documents and conducted a *de novo* review of the record.

INTRODUCTION AND BACKGROUND

Petitioner Jesus Miguel Villarreal seeks 28 U.S.C. § 2254 habeas relief from his 2010 conviction by jury verdict of possession of methamphetamine with intent to deliver in a school zone. Dkt. 6. He raises nine grounds for relief: illegal stop, search and seizure; lack of due process during suppression hearing; wrongful denial of suppression motion; insufficient evidence; wrongful admission of irrelevant expert testimony; unconstitutionality of school zone statute as applied; and, prosecutorial misconduct. *Id.* The Report and Recommendation, filed October 8, 2014, recommends the denial of the petition and dismissal of the case. Dkt. 19. The Report and Recommendation further recommends a denial of the certificate of appealability. *Id.* The facts and relevant procedural history are in the Report and Recommendation (Dkt. 19, at 2-6) and are adopted here by reference.

EVIDENTIARY HEARING

The Magistrate Judge concluded that an evidentiary hearing was unnecessary as Petitioner's claims rely on established rules of constitutional law and may be resolved on the existing state court record. Dkt. 19 at 7. The Court agrees.

FOURTH AMENDMENT CLAIMS

Petitioner's Fourth Amendment claims concern the initial stop and search and the of the trial court's denial of his motion to suppress the evidence found during the search. The Magistrate Judge found these claims governed by *Stone v. Powell*, 428 U.S. 465, 482 (1976), wherein the Supreme Court held that where the state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be

1 granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional
2 search or seizure was introduced at his trial. As noted by the Magistrate Judge, the record
3 reflects that Petitioner was provided the opportunity to litigate the Fourth Amendment violations
4 and in fact did so. The trial court conducted a suppression hearing and concluded that there was
5 sufficient evidence of criminal activity to support a limited *Terry* detention and that Petitioner
6 had knowingly and intelligently consented to the search of the bag. Petitioner's Fourth
7 Amendment claims are barred and should be denied.

8 **INSUFFICIENT EVIDENCE**

9 Petitioner claims that there was insufficient evidence to support the jury's verdict that he
10 intended to deliver methamphetamine. The Magistrate Judge found that based on the amount of
11 methamphetamine and cash Petitioner had in his possession, together with the possession of a
12 police scanner, were sufficient for any rational trier of fact could have found beyond a reasonable
13 doubt that Petitioner intended to deliver methamphetamine. The jury was entitled to believe the
14 State's evidence and disbelieve the Petitioner's explanation that the methamphetamine was for
15 his personal use.

16 The state court's adjudication of Mr. Villarreal's insufficient evidence claim was not
17 objectively unreasonable and was not an unreasonable application of, or contrary to, clearly
18 established Supreme Court precedent. Petitioner's insufficiency of evidence claim should be
19 denied.

20 **ADMISSION OF EXPERT TESTIMONY**

21 Petitioner contends that the admissibility of expert testimony deprived him of a fair trial.
22 As indicated by the Magistrate Judge, the admission of evidence does not provide a basis for
23 habeas relief unless it rendered the trial fundamentally unfair in violation of due process. See
24

1 *Estelle v. McGuire*, 502 U.S. 62, 67-69 (1991). A review of the record reveals that the expert
2 testimony did not have a substantial or injurious effect or influence in determining the jury's
3 verdict. The Magistrate Judge reasoned that the testimony was not offered as an opinion of
4 Petitioner's guilt or credibility, the testimony was useful to the jury's understanding of other
5 testimony (regarding the amounts of methamphetamine, the significance of those amounts, the
6 street price and the point retail price of the drugs), and there was sufficient evidence other than
7 the detective's testimony, with which to convict Petitioner of possession of methamphetamine
8 with intent to distribute.

9 The state court's adjudication of this claim was not contrary to, or an unreasonable
10 application of, clearly established federal law. Petitioner's claim concerning the admissibility of
11 the expert testimony should be denied.

12 **CONSTITUTIONALITY OF SCHOOL ZONE STATUTE**

13 Petitioner claims contends that Washington's school zone statute, RCW 69.50.435, is
14 unconstitutional as applied to the facts of his case because there was no evidence that the school
15 zone was a destination chosen by him, and that he did not voluntarily stop there but was merely
16 passing through the school zone at 2 a.m. when there were no school children present.

17 The Magistrate Judge found that the state court interpreted the statute to apply to
18 Petitioner and a state court's interpretation of state law binds a federal court sitting in habeas
19 corpus. See *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005). Additionally, the state court's
20 adjudication of Petitioner's equal protection (rational basis) claim was not contrary to, or an
21 unreasonable application of, clearly established federal law.

22 The Court agrees with the analysis of the Magistrate Judge. The constitutional challenge
23 to RCW 69.50.425 should be denied.

PROSECUTORIAL MISCONDUCT

Petitioner asserts the prosecutor committed misconduct during closing by suggesting that Petitioner had not proved his innocence. As detailed by the Magistrate Judge, the record does not reflect Petitioner's allegations. The prosecutor informed the jury it was the state's burden to prove Petitioner's guilt. The prosecutor told the jury the evidence established Petitioner's guilt and it was on that basis the prosecutor asked the jury to return a guilty verdict. Nor does the record reflect that Petitioner objected to any of the prosecutor's closing argument. There is no error where there is a failure to object and the misconduct could have been resolved by timely objection. *Nevius v. Sumner*, 852 F.2d 463, 470 (9th Cir. 1988).

The state court's adjudication of this issue was not contrary to, or an unreasonable application of, clearly established federal law and therefore, the prosecutorial misconduct claim should be denied.

CERTIFICATE OF APPEALABILITY

The Magistrate Judge recommends the denial of a certificate of appealability. Dkt. 19 at 18-19. A certificate of appealability may issue only if a petitioner has made "a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard "by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Petitioner has not met this burden.

CONCLUSION

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom and the remaining record, does hereby find and **ORDER**:

1. The Court adopts the Report and Recommendation (Dkt. 19);
2. Petitioner's § 2254 amended habeas petition is **DENIED** and **DISMISSED WITH PREJUDICE**
3. Petitioner is **DENIED** issuance of a certificate of appealability;
4. The Clerk is directed to send a copy of this Order to Plaintiff, and to the Hon. Karen L. Strombom.

Dated this 29TH day of September, 2014.



ROBERT J. BRYAN
United States District Judge